



4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2016-0053]

Categorical Exclusion Survey Review

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In this notice, FRA is providing the public a review of FRA's survey of categorical exclusions (CEs) used in railroad transportation projects since 2005. FRA is soliciting public comment on the review of the CE survey, two new categories of activities that may be appropriate for categorical exclusion, and any other new categories of activities for FRA consideration as CEs.

DATES: FRA must receive written comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. FRA will consider comments it receives after this date to the extent practicable.

ADDRESSES: Comments: Persons may submit comments related to Docket FRA-2016-0053 by any of the following methods:

- Online: Comments should be filed at the Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 202-493-2251.

Instructions: All submissions must include the agency name, docket name, and docket number for this notice. Note that FRA will post all comments received without change to <http://www.regulations.gov>, including any personal information provided.

Docket: To access the docket or read background documents or comments received, go to <http://www.regulations.gov> at any time, or to the U.S. Department of Transportation, Docket Operations, M-30, West Building, Ground Floor, room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Johnsen, Environmental and Corridor Planning Division, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001 or by telephone at (202) 493-1310, or Mr. Chris Van Nostrand, Attorney-Advisor, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001 or by telephone at (202) 493-6058.

SUPPLEMENTARY INFORMATION:

I. Background

On December 4, 2015, the President signed the Fixing America's Surface Transportation (FAST) Act into law (Public Law No. 114-94). Section 11503 of the FAST Act requires the Secretary, among other things, to: (1) survey FRA CE use in

transportation projects since 2005; and (2) publish in the Federal Register for notice and public comment a review of the survey that includes a description of the types of actions categorically excluded and any actions the Secretary is considering for new CEs, including those that would conform to CEs other DOT modal administrations use. CEs are actions FRA has determined do not individually or cumulatively have significant effects on the human environment and, thus, do not require it to prepare an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). See 40 CFR 1508.4.

FRA's Procedures for Considering Environmental Impacts (FRA Environmental Procedures), 64 FR 28545, May 26, 1999, include a list of 20 CEs. In 2013, FRA updated the FRA Environmental Procedures by adding seven new CEs. 78 FR 2713, Jan. 14, 2013.

II. Review of Survey of Categorical Exclusions Used by FRA since 2005

To comply with the FAST Act section 11503 requirement to survey FRA's use of CEs for transportation projects since 2005, FRA focused its survey on projects funded by FRA-administered financial assistance programs, such as the High-Speed Intercity Passenger Rail and Transportation Investment Generating Economic Recovery grant programs, the Rail Line Relocation and Improvement program, and the Railroad Rehabilitation and Improvement Financing loan/loan guarantee program. As a result, not all FRA CEs used since 2005 are included in the survey. For example, FRA did not survey FRA's use of CEs for rulemakings.

Table 1 is a review of FRA’s survey organized by the frequency of FRA’s use of each CE.¹ In general, the survey shows the most frequently applied CEs are for the maintenance or construction of railroad infrastructure, such as maintenance activities for existing railroad infrastructure and equipment; minor rail line additions; and bridge rehabilitation, reconstruction, and replacement. Some CEs shown in Table 1 as Category 2 or 3 also cover maintenance or construction activities, but were recently added in 2013 and thus, have a smaller overall sample size. FRA will use the survey and public comments on this notice to develop proposals for new CEs or modify existing CEs.

Table 1. Results of FRA CE Survey: January, 2005 – March, 2016

Category 1: Most Frequently Used
(11) Maintenance of: existing railroad equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; maintenance-of-way and maintenance-of-equipment bases; and other existing railroad-related facilities. For purposes of this exemption “maintenance” means work, normally provided on a periodic basis, which does not change the existing character of the facility, and may include work characterized by other terms under specific FRA programs.
(16) Minor rail line additions including construction of side tracks, passing tracks, crossovers, short connections between existing rail lines, and new tracks within existing rail yards provided that such additions are not inconsistent with existing zoning, do not involve acquisition of a significant amount of right of way, and do not significantly alter the traffic density characteristics of the existing rail lines or rail facilities.
(26) Assembly or construction of facilities or stations that are consistent with existing land use and zoning requirements, do not result in a major change in traffic density on existing rail or highway facilities and result in approximately less than ten acres of surface disturbance, such as storage and maintenance facilities, freight or passenger loading and unloading facilities or stations, parking facilities, passenger platforms, canopies, shelters, pedestrian overpasses or underpasses, paving, or landscaping.
(22) Bridge rehabilitation, reconstruction or replacement, the rehabilitation or maintenance of the rail elements of docks or piers for the purposes of intermodal transfers, and the construction of bridges, culverts, or grade separation projects,

¹ The number preceding the text of the CE corresponds to the number of the CE in the FRA Environmental Procedures.

predominantly within existing right-of-way, that do not involve extensive in-water construction activities, such as projects replacing bridge components including stringers, caps, piles, or decks, the construction of roadway overpasses to replace at-grade crossings, construction or reconstruction of approaches and/or embankments to bridges, or construction or replacement of short span bridges.
(27) Track and track structure maintenance and improvements when carried out predominantly within the existing right-of-way that do not cause a substantial increase in rail traffic beyond existing or historic levels, such as stabilizing embankments, installing or reinstalling track, re-grading, replacing rail, ties, slabs and ballast, installing, maintaining, or restoring drainage ditches, cleaning ballast, constructing minor curve realignments, improving or replacing interlockings, and the installation or maintenance of ancillary equipment.
Category 2: Less Frequently Used
(19) Improvements to existing facilities to service, inspect, or maintain rail passenger equipment, including expansion of existing buildings, the construction of new buildings and outdoor facilities, and the reconfiguration of yard tracks.
(23) Acquisition (including purchase or lease), rehabilitation, or maintenance of vehicles or equipment that does not cause a substantial increase in the use of infrastructure within the existing right-of-way or other previously disturbed locations, including locomotives, passenger coaches, freight cars, trainsets, and construction, maintenance or inspection equipment.
Category 3: Infrequently Used
(17) Acquisition of existing railroad equipment, track and bridge structures, electrification, communication, signaling or security facilities, stations, maintenance of way and maintenance of equipment bases, and other existing railroad facilities or the right to use such facilities, for the purpose of conducting operations of a nature and at a level of use similar to those presently or previously existing on the subject properties.
(18) Research, development and/or demonstration of advances in signal, communication and/or train control systems on existing rail lines provided that such as research, development and/or demonstrations do not require the acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail line.
(19) Improvements to existing facilities to service, inspect, or maintain rail passenger equipment, including expansion of existing buildings, the construction of new buildings and outdoor facilities, and the reconfiguration of yard tracks.
(24) Installation, repair and replacement of equipment and small structures designed to promote transportation safety, security, accessibility, communication or operational efficiency that take place predominantly within the existing right-of-way and do not result in a major change in traffic density on the existing rail line or facility, such as the installation, repair or replacement of surface treatments or pavement markings, small passenger shelters, passenger amenities, benches, signage, sidewalks or trails, equipment enclosures, and fencing, railroad warning devices, train control systems, signalization, electric traction equipment and structures, electronics, photonics, and communications systems and equipment, equipment mounts, towers and structures, information processing equipment, and

security equipment, including surveillance and detection cameras.
(12) Temporary replacement of an essential rail facility if repairs are commenced immediately after the occurrence of a natural disaster or catastrophic failure.
(25) Environmental restoration, remediation and pollution prevention activities in or proximate to existing and former railroad track, infrastructure, stations and facilities conducted in conformance with applicable laws, regulations and permit requirements, including activities such as noise mitigation, landscaping, natural resource management activities, replacement or improvement to storm water oil/water separators, installation of pollution containment systems, slope stabilization, and contaminated soil removal or remediation activities.
(21) Alterations to existing facilities, locomotives, stations and rail cars in order to make them accessible for the elderly and persons with disabilities, such as modifying doorways, adding or modifying lifts, constructing access ramps and railings, modifying restrooms, and constructing accessible platforms.
(15) Financial assistance for the construction of minor loading and unloading facilities, provided that projects included in this category are consistent with local zoning, do not involve the acquisition of a significant amount of land, and do not significantly alter the traffic density characteristics of existing rail or highway facilities.

III. New Categorical Exclusions FRA is Considering

Since updating its CE list in 2013, FRA has identified the following two classes of actions that may be appropriate for categorical exclusion:

- Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes; and
- Refinancing assistance where the project sponsor has already completed project-related construction activities.

FRA seeks input from interested parties, stakeholders, and the public on additional categories of activities appropriate for a CE that FRA should consider. FRA also seeks comment on the two CEs listed above.

Issued in Washington, DC on May 26, 2016.

Sarah E. Feinberg,
Administrator.

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